

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NEXTGEAR CAPITAL, INC. AND
WESTLAKE FLOORING COMPANY,
LLC

Plaintiffs,

v.

DEALERS CREDIT EXPRESS, INC.

Defendant.

Case No. 3:17-cv-01012-M

JURY TRIAL DEMANDED

**DEFENDANT'S MOTION FOR LEAVE
TO FILE ITS SECOND AMENDED ANSWER**

Defendant Dealers Credit Express, Inc. (“DCE”), files this Motion for Leave to File its Second Amended Answer (“Motion”) and would respectfully show the Court as follows:

1. Pursuant to paragraph 3 of this Court’s Scheduling Order (Dkt. 23), Defendant’s deadline for filing an amendment to its Answer was October 15, 2017. Defendant did file a First Amended Answer (Dkt. 27) on Sunday, October 15, 2017, in which Defendant made modifications and additions to its affirmative defenses.

2. Defendant’s ongoing research of the law and review of the facts revealed two additional affirmative defenses, implied-in-fact contract and constructive notice, which Defendant then added to the First Amended Answer. Defendant filed a Second Amended Answer (Dkt. 29) with these additional two affirmative defenses on Monday, October 16, 2017. Because Defendant’s pleading deadline fell on a Sunday, Defendant believed that the deadline carried over until Monday, October 16, 2017, consistent with Fed. R. Civ. P. 6(a)(1)(C). Defendant’s Second Amended Complaint, for which leave to file is hereby requested, is attached hereto as Exhibit 1.

3. DCE respectfully requests leave of Court to file its Second Amended Answer because good cause exists and, in accordance with Rule 15(a)(2), which provides that leave to amend should be liberally granted when justice so requires. FED. R. CIV. P. 15(a)(2). “The policy of the federal rules is to permit liberal amendment to facilitate determination of claims on the merits and to prevent litigation from becoming a technical exercise in the fine points of pleading.” *Dussouy v. Gulf Coast Investment Corp.*, 660 F.2d 594, 598 (5th Cir. 1981).

5. This case is in the early discovery phase. No depositions have been taken, no documents have been produced, and no written discovery responses have been served. In addition, Defendant’s Second Amended Answer was filed on the first business day after the Sunday deadline set forth in the Scheduling Order. Accordingly, Plaintiff would suffer no prejudice by this proposed amendment. Consequently, this Motion is for good cause and not for the purpose of delay.

6. Plaintiff opposes this Motion.

7. For the reasons set forth above, DCE prays that the Court grant DCE’s Motion and for such other and further relief as the Court may deem just and proper. A proposed Order is attached hereto.

Respectfully submitted,



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**ATTORNEYS FOR DEFENDANT DEALERS
CREDIT EXPRESS, INC.**

CERTIFICATE OF CONFERENCE

I certify that on the 17th day of October, 2017, counsel for Plaintiffs and counsel for Defendant conferred regarding the relief sought in this Motion. Counsel for Plaintiffs opposes the relief sought in this Motion.

By: 
Scott E. Stevens

CERTIFICATE OF SERVICE

By my signature below, I do hereby certify that on October 18, 2017, a true and correct copy of the foregoing was filed using the Court's electronic filing system, which will provide notice to all parties of record.

By: 
Scott E. Stevens